

Developing Projects for Multiple Targeted Populations: Legal and Practical Best Practices to Help Avoid Fair Housing Complaints

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Moving Forward Together . . .

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What Is Fair Housing?



Protected Classifications Under Federal Fair Housing Act

- ☐ Race
 - ☐ Color
 - ☐ National origin
 - ☐ Religion
 - ☐ Sex
 - ☐ Familial status
 - ☐ Handicap
- ☐ Per HUD Regulation, in § 504 Properties, eligibility shall be determined *without regard* to actual or perceived sexual orientation, gender identity or marital status

Protected Classifications in California

- ☐ Race
- ☐ Color
- ☐ Creed
- ☐ Religion
- ☐ Gender
- ☐ Gender identity
- ☐ Gender expression
- ☐ Sexual orientation
- ☐ Genetic Information
- ☐ National Origin
- ☐ Ancestry
- ☐ Age
- ☐ Familial status
- ☐ Marital status
- ☐ Source of income
- ☐ Handicap or disability
- ☐ Arbitrary Characteristics

Types of Discrimination

☐ Disparate treatment

- Treating a protected class differently
- Example: Advertising a Project as: “*Hispanic Community -- all employees speak Spanish.*”

☐ Disparate impact

- Negative impact on a protected class
- Example: “*Priority for housing given only to individuals currently actually residing in East LA.*”

Golden Rules of Fair Housing

- ☐ Treat everyone equally (*with one exception*)
 - Disability Cases are the Exception
- ☐ Use common sense
- ☐ Use your resources



Potential Fair Housing Issues During Project Development Stage

- ☐ Funding Source Requirements
 - Restricting residents to certain populations
 - Preferences
 - ☐ Based upon protected classification
 - ☐ Have a disparate impact on a protected classification
- ☐ Need to ensure comply with both State and Federal laws regarding fair housing requirements.

Resident Restrictions

- Homeless
 - Not a protected classification
 - Socio-economic issue
- Other limitations involving protected classifications require an “Act of Congress” to avoid fair housing issues. Examples:
 - Certain Disabilities
 - Transitional Age Youth

Certain Disabilities

- ❑ Both state and federal law prohibit discrimination based upon handicap.
- ❑ General rule, cannot exclude an individual because he or she does not have a specific handicap.
- ❑ A specific class of individuals with handicaps may be excluded from a program *if* the program is limited by ***Federal statute*** or Executive order to a different class of individuals. (24 CFR § 8.4(c)(1))

Certain Disabilities

- ❑ Some Federal Statutes allow for particular types of disabilities
- ❑ Section 202/8, 202 PAC and Section 811 Programs may be limited to persons qualifying under a specific disability category: persons with physical disabilities, chronically mentally ill individuals and developmentally disabled individuals.
- ❑ Housing Opportunities for Persons with Aids Program (HOPWA)

Transitional Age Youth

- By definition, TAY programs discriminate against participants based upon age (usually under 25)
- Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*) prohibits discrimination on basis of age in programs receiving Federal financial assistance
- Cal. Gov't Code § 11135 prohibits discrimination based on age (among other things) in any program receiving State Financial Assistance.

Transitional Age Youth

- ❑ Age Discrimination Act of 1975 specifically allows a housing provider to limit occupancy to a specific age-restricted group, if the age restriction is authorized by law. (42 U.S.C. § 6103(b)(2))
- ❑ Cal. Gov't Code § 11139.3 provides:
The provision of housing for homeless youth is hereby authorized and shall not be considered unlawful age discrimination, notwithstanding any other provision . . .
- ❑ Act of Congress authorizing exception makes TAY Programs permissible under fair housing laws.

Familial Status Discrimination

- ❑ TAY Programs do not exclude families with children.
- ❑ Senior Housing, if “done right” falls within statutory exceptions under both Federal and State law.
- ❑ Any other age restrictions may have a problem
 - For example, housing for families with only young children may be discriminatory if excluding families with older children.

Preferences

- ☐ Applicants with preferences receive an opportunity for an available unit earlier than those who do not have a preference.
- ☐ Only affects order of applicants on waiting list
- ☐ May cause fair housing issues if:
 - Based upon a protected classification; or
 - So narrowly tailored that it has the impact of discriminating against a protected classification

Residency Preferences

- ☐ Applies to those who live or work in a specific geographic area at the time of application.
- ☐ Gives priority over non-residents.
- ☐ Cannot have the effect of denying admission based upon a protected classification.
- ☐ HUD requires residency preferences include those who currently live in, work in, or have been hired to work in the designated area.

Residency Preferences

- ☐ May not base a residency preference on length of time applicant has lived/worked in an area.
- ☐ Some projects require HUD approval of residency preferences.
- ☐ Some HUD Programs limit scope of residency preferences (e.g., some regulations mandate scope limited to county or municipality)
- ☐ Cannot hold units for those who would qualify for a residency preference.

Other Permissible Preferences

- ☐ Victims of Domestic Violence
- ☐ Military Veterans (depending on program)
- ☐ Warning – Working Families Preferences
 - While permissible under certain federal programs, arguably source of income discrimination under State law.
 - Law is unclear whether regulations allowing such a preference technically pre-empt State law prohibiting source of income discrimination.

Managing Competing Programs

- ☐ Be sure to distinguish between restrictions, which are mandatory requirements, and preferences, which do not exclude others.
- ☐ Preferences can all be managed in one wait list.
- ☐ Competing programs with different restrictions may require multiple wait lists be maintained.
- ☐ Tenant Selection Plan must describe how the waiting list(s) are maintained.

Waiting List Considerations

- ☐ Be consistent as to what information is included on the waiting list
- ☐ Limit information to only what is necessary (exclude info such as race, gender etc.)
- ☐ Have a clear policy on waiting list updates and purging
- ☐ If multiple lists used, be clear as to how maintained and implemented

Multiple Wait List Considerations

- ☐ Permit individuals to be on all wait lists for which they qualify.
- ☐ Have clear policy as to what wait lists are for what units.
- ☐ If floating units, decide, in advance, how you will alternate between lists.
- ☐ Be consistent!

Remember Your Mission

“There must be a right way,
To do the right thing;
All that we need to do is find it.”

Karen K. McCay



Operational Issues to Consider When Putting Together a New Project



Many Funding Sources

- ☐ MHSA
- ☐ TCAC
- ☐ LAHD
- ☐ Developer
- ☐ Rental Revenue

Targeted Populations

- ☐ Homeless or chronically homeless
- ☐ Single adults or families
- ☐ Low Income adults or families
- ☐ Special needs – i.e. Palo Verde/Day St.
(chronic homeless with mental illness)
- ☐ How will they mix?
 - Education of tenants/staff
 - Communicate without violating privacy

Staffing

- Property Management
 - Compliance and Regulatory Agreements (Reports)
 - Occupancy, Rent Collection & Maintenance
 - Managing the Wait List for Various Populations
- Staff Qualifications to Consider

Staffing

- ☐ Supportive Services
 - Case Management
 - Mental Health
 - Life Skills
 - Recovery Services
- ☐ On-site services or easy access to off-site services
- ☐ Determine what will residents need and how you can provide

Other Considerations

- Location of new project
 - The zoning of the project
 - Close to bus lines, schools, medical services, shopping centers
- Design
 - How to incorporate “eyes” on the property to encourage engagement with residents
 - Taking into account accommodation animals

Other Considerations

- ☐ Goal: Housing Stability
- ☐ Consider communication among:
 - Tenants
 - Providers
 - Property Management
 - Facilities/Maintenance
 - Social Services
 - Security

Fair Housing Obligations Apply to Every Aspect of Housing Relationship

- ☐ Advertising
- ☐ Accepting and processing applications
- ☐ Assigning units
- ☐ Terms of sale or rental
- ☐ Services or facilities
- ☐ Termination of tenancy
- ☐ All other aspects of occupancy

Resources

- HUD Manual – 4350.3
 - Chapter 2 “Civil Rights and Nondiscrimination Requirements”
 - Chapter 4 “Waiting List and Tenant Selection”
- Statutes/Regulations for specific Programs
- Regulatory Agreements for the Project



About the Presenters

Karen K. McCay

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- Karen McCay is the Managing Partner and President of the law firm Pahl & McCay, splitting her time between the San Jose and Los Angeles offices of the firm. Her areas of concentration include all aspects of real estate, with special emphasis on the multi-family housing industry. She represents both for-profit and non-profit owners, property managers and developers. Ms. McCay provides operational advice in all areas of employment and real estate, including fair housing and compliance issues, and has an extensive litigation practice representing landlords and other businesses in both court actions and administrative proceedings. She also conducts trainings on fair housing, preventing sexual harassment, operational issues and similar topics.
- Founded in 1989, Pahl & McCay serves its clients in California and throughout the United States as a full-service corporate, business and litigation law firm. The firm's areas of practice are as broad as the interests of its clients, however, its emphasized areas of concentration are Real Estate and Development; Labor and Employment (exclusively representing Management); Commercial Lending; General Business and Commercial Litigation; Entity Formation and General Counsel for Closely Held Businesses.



About the Presenters

Maria L. Robles

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Maria L. Robles has been with L.A. Family Housing (LAFH) for 22 years, helping families successfully transition out of homelessness and remain stable and successful in their permanent housing. As an agency, LAFH provides temporary housing through its three emergency and transitional shelters, as well as permanent housing throughout the City in 19 apartment buildings. During her tenure with LAFH, Maria has had a unique opportunity to work with residents at each stage of their housing and services needs, beginning in the Social Services Department working as a Case Manager in the shelters through to her current role as Asset Manager.

Maria joined LAFH's Property Management Department in 2008, bringing to her work an expertise on the challenges and obstacles a formerly homeless family faces as they strive to permanently end homelessness for themselves. Much of Maria's work in the shelters revolved around the development of Individual Service and Housing Plans, determining the most appropriate next housing option for the family and assisting them in securing that housing, whether it was an apartment within LAFH's portfolio or in the community. It was these particular skills that facilitated her shift into the Property Management Department of the agency, where she directly managed LAFH's on-site Resident Managers and facilitated the lease-up and compliance operations of the Property Management team.

In 2011 LAFH decided to outsource its property management functions to the John Stewart Company and at that time Maria became LAFH's Asset Manager. In this role, Maria works closely with the onsite JSCO team on the lease up of our units (LAFH maintains a Homeless Preference in our Resident Selection Guidelines) and coordinates ongoing service needs for our residents by informing the appropriate Social Services staff of concerns with any tenants. Depending on the resident and their needs, services may be provided by LAFH's Housing Stability staff (who work with former shelter residents), the Tenant Services Department, or by the on-site staff such as those at our permanent supportive housing properties for chronically homeless adults living with mental illness. In addition to the service linkages, Maria works closely with JSCO on the physical needs of the properties (including annual inspections), compliance reporting, and welfare exemption filings.

Thank you!

